REMARKS

Applicants reply to the Office Action dated July 15, 2011 within three months. Claims 1-14 and 16-23 were pending in the application and the Examiner rejects claims 1-14 and 16-23. Applicants cancel claim 7 without prejudice to filing one or more claims having similar subject matter, in other applications. Support for the amendments may be found in the originally-filed specification, such as for example, in paragraphs [0011] and [0012]. No new matter is entered with these amendments. Applicants respectfully request reconsideration of this application.

Examiner Teleconference

Applicants thank the Examiner for the courtesy of the teleconference conducted on October 4, 2011. Although no specific agreement was reached as to the claims and/or rejections, the Examiner asserted she would carefully review the arguments presented since the amendments appeared to be in the right direction.

Rejections under 35 U.S.C § 103

The Examiner rejects claims 1-2, 6-11, 13 and 21 under 35 U.S.C. § 103(a), as being unpatentable over Cannon et al., U.S. Patent No. 6,154,729, ("Cannon"), in view of Lee et al., U.S. Publication No. 2002/0099649 ("Lee") and further in view of Richey et al., U.S. Patent No. 7,356,516 ("Richey") and in further view of Killeen Jr. et al, U.S. Patent No. 6,324,523 ("Killeen"). The Examiner rejects claims 3-5, 12, 14, 16-20 and 22-23 under 35 U.S.C. § 103(a), as being unpatentable over Cannon in view of Lee in view of Richey and in further view of Sharper, U.S. Patent Publication No. 2004/0030644 ("Sharper") in further view of Killeen. Applicants respectfully disagree with these rejections, but Applicants present claim amendments in order to clarify the patentable aspects of the claims and to expedite prosecution. Moreover, Applicants assert that the Examiner has not established a *prima facie* case of obviousness.

The Examiner states on Page 4 of the Office Action "Cannon does not explicitly teach: ...wherein the fee is not assessed to all disputed transactions." The Examiner offers the teachings of Lee to cure what is lacking in Cannon. Applicants' respectfully disagree with the characterization of the teachings of Lee.

Generally, Lee teaches a system for processing "online payment transactions occurring over public networks to identify fraudulent transactions." (Abstract) Specifically, Lee teaches "In

addition to paying a fee for each chargeback, issuing banks can levy fines on merchants having too many chargebacks. Typically 1.5-3.0% of the merchant's chargeback volume, such fines can range from a few hundred dollars per month, to $10,000 or even $100,000 per month, with fines escalating higher as chargebacks continue unabated." (Paragraph [0019]).

Independent claim 1 (as amended) states "assessing, by the computer-based system, a fee against the merchant for each chargeback exceeding the predetermined threshold ratio of chargebacks in response to the merchant exceeding the predetermined threshold ratio of chargebacks, **and** in response to the merchant exceeding a threshold number of time periods in which the merchant may exceed the predetermined threshold ratio without incurring the fee, wherein the fee is not assessed to the merchant for all of the chargebacks of the merchant, wherein no fee is assessed against the merchant in response to the merchant not exceeding the threshold number of time periods in which the merchant may exceed the predetermined threshold ratio of chargebacks." Stated another way, in the current system a merchant may first exceed a threshold of chargebacks without paying a fee if the merchant does not additionally exceed the number of threshold number of time periods in which the merchant may exceed the ratio of chargebacks. As discussed in paragraph [0022] of the instant specification, this allows the merchant to take corrective action to ultimately reduce the total amount of chargebacks.

Lee is limited to stating "issuing banks can levy fines on merchants having too many chargebacks." Stated another way, Lee does not disclose or contemplate a tiered approach to reducing the total amount of chargebacks in contrast to the present claims which allow the threshold of chargebacks to be exceeded a predetermined amount of times before each chargeback which exceeds the threshold be assessed a fee (to the merchant). Instead, Lee offers a binary approach: (1) If "too many chargebacks" (which the Examiner has previously equated with exceeding the threshold) assess a fine, (2) Otherwise, Lee just assesses the fee for each chargeback. There is not teaching in Lee to also have instances of chargebacks greater than "too many" where the fee is held in abeyance until the merchant exceeds the threshold a predetermined number of times. The other cited references do not cure the short comings of Lee and Cannon. Thus, Lee alone or in combination with the other cited references, does not disclose or contemplate "assessing, by the computer-based system, a fee against the merchant for each chargeback exceeding the predetermined threshold ratio of chargebacks in response to the merchant exceeding the predetermined threshold ratio of chargebacks, **and** in response to the merchant exceeding a

threshold number of time periods in which the merchant may exceed the predetermined threshold ratio without incurring the fee, wherein the fee is not assessed to the merchant for all of the chargebacks of the merchant, wherein no fee is assessed against the merchant in response to the merchant not exceeding the threshold number of time periods in which the merchant may exceed the predetermined threshold ratio of chargebacks." (Emphasis added).

Similar to claim 1, Lee alone or in combination with the other cited references, does not disclose or contemplate "assessing, by the computer-based system, a fee to the merchant for each chargeback that exceeds the first threshold ratio in response to the ratio of chargebacks to total credit transactions being greater than the first threshold ratio, **and** in response to the merchant exceeding a threshold number of time periods in which the merchant may exceed the first threshold ratio without incurring the fee, wherein the fee is not assessed to the merchant for all disputed transactions, wherein no fee is assessed against the merchant in response to the merchant not exceeding the threshold number of time periods in which the merchant may exceed the predetermined threshold ratio of chargebacks," as recited by independent claim 14. (Emphasis added).

Also, for the same reasons as listed above for claim 1, Lee alone or in combination with the other cited references, does not disclose or contemplate assessing "a fee to the merchant in response to the merchant's ratio of chargebacks to total credit transactions being greater than the threshold ratio of chargebacks to total credit transactions, the fee applied to each disputed transaction exceeding the threshold ratio of chargebacks to total credit transactions **and** in response to the merchant exceeding a threshold number of time periods in which the merchant may exceed the predetermined threshold ratio without incurring the fee, wherein the fee to the merchant is not assessed to all chargebacks," as recited by independent claim 20. (Emphasis added).

Richey is directed to "facilitating payment transaction disputes" between a merchant and a consumer. (Abstract) The Examiner states on page 5 that Richey teaches "wherein the fee is not assessed to all disputed transactions." However, the current claims are currently amended to clarify that the fee is assessed to the merchant "in response to the merchant exceeding the predetermined threshold ratio of chargebacks, **and** in response to the merchant exceeding a threshold number of time periods in which the merchant may exceed the predetermined threshold ratio," as recited by claim 1, (emphasis added) and as variously recited by claims 14 and 20. As such, it is Applicants' belief that Richey is not an appropriate reference and Applicants respectfully request it be removed.

The Examiner states on page 6 of the Office Action "Killeen teaches: ... and in response to the merchant exceeding a threashold number of times periods in which the merchant may exceed the predetermined threshold ratio without incurring the fee." Killeen "generally relates to data processing systems and methods used to manage a unique asset-based financial resource processor. In particular, the present invention relates to the systems, database structures, and controlling data processing logic for coordinating a plurality of accounts directed to financial instruments and investments to enhance client resource access and utilization," (abstract).

Specifically Killeen states "The next sequence tests whether the account is accorded platinum service level--at test 1517; if yes, logic branches to blocks 1519, 1521, and 1523 and the entry of fee waivers for fed fund transfers, estate legal transfer, and return deposit fee waiver, respectively. Thereafter, the foregoing fee waiver data, as collected, is written to file, block 1525 and stored, block 1527. (column 10, lines 61-67). Stated another way, an annual fee is waived if an account is afforded a platinum level. This is contrary to the present application where a **penalty** fee is held in abeyance in order for a merchant to take corrective action. A benefit for account attributes results in a different system than the instant application which states "assessing, by the computer-based system, a fee against the merchant for each chargeback exceeding the predetermined threshold ratio of chargebacks in response to ... the merchant exceeding a threshold number of time periods in which the merchant may exceed the predetermined threshold ratio without incurring the fee," as variously recited by the pending independent claims.

Sharper generally teaches "a method for facilitating charge card transactions including evaluating electronically transmitted data relating to a charge card transaction and guaranteeing a charge card transaction that meets certain criteria against risk of loss," (abstract.) The Examiner states on page 16, "Sharper teaches: ...establishing the predetermined threshold ratio based on a factor comprising an industry category including the merchant (see par 11, note that chargeback characteristics vary from industry. A ratio based on industry category is thus fairly suggested to accommodate the differences between industries). It would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have provided Cannon in view of Lee with that industry differentiation of Sharper in order to have matched the risk of an industry with the level of fine as taught implicitly by Sharper since Sharper teaches incidence of chargebacks varies across industries." (emphasis added.)

Applicants respectfully assert that the level of fine is not what is presently claimed. The pending claims recite the "predetermined threshold ratio is based on a factor comprising an industry category of the merchant," (emphasis added). Thus, in the presently pending claims, the level of the threshold is based on a factor comprising an industry category of the merchant. Sharper is silent as to the level of the threshold being based on a factor comprising an industry category of the merchant. The other cited references do not cure this deficiency of Sharper. Thus, the cited references alone or in combination do not disclose or contemplate "wherein the predetermined threshold ratio is based on a factor comprising an industry category of the merchant."

Thus, Cannon, Lee, Richey, Sharper, or Killeen alone or in combination, do not disclose or contemplate at least "assessing, by the computer-based system, a fee against the merchant for each chargeback exceeding the predetermined threshold ratio of chargebacks in response to the merchant exceeding the predetermined threshold ratio of chargebacks, **and** in response to the merchant exceeding a threshold number of time periods in which the merchant may exceed the predetermined threshold ratio without incurring the fee, wherein the fee is not assessed to the merchant for all of the chargebacks of the merchant, wherein no fee is assessed against the merchant in response to the merchant not exceeding the threshold number of time periods in which the merchant may exceed the predetermined threshold ratio of chargebacks," as recited by independent claim 1 (emphasis added) and similarly recited by independent claims 14 and 20.

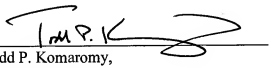
Dependent claims 2-6, 8-13, 16-19 and 22-23 variously depend from independent claims 1, 14 and 20. Therefore, Applicants assert that dependent claims 2-6, 8-13, 16-19 and 22-23 are patentable for at least the same reasons stated above for differentiating independent claims 1, 14 and 20 as well as in view of their own respective features. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of dependent claims 2-6, 8-13, 16-19 and 22-23.

When a phrase similar to "at least one of A, B, or C" or "at least one of A, B, and C" is used in the claims or specification, Applicants intend the phrase to mean any of the following: (1) at least one of A; (2) at least one of B; (3) at least one of C; (4) at least one of A and at least one of B; (5) at least one of B and at least one of C; (6) at least one of A and at least one of C; or (7) at least one of A, at least one of B, and at least one of C.

Applicants respectfully submit that the pending claims are in condition for allowance. The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. **19-2814**. Applicants invite the Examiner to telephone the undersigned, if the Examiner has any questions regarding this Reply or the present application in general.

Respectfully submitted,

Dated: October 5, 2011

By: 
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